APPEAL NO. 042038
FILED OCTOBER 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on July 20, 2004. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable low back injury on _____; that the compensable injury does not extend to or include a herniation at L4-5; that the claimant had disability from August 15 through September 12, 2003, but that the claimant did not have disability from May 7 through August 14, 2003, or from September 13, 2003, to the date of the CCH.

The appellant/cross-respondent (self-insured) appealed the determinations that the claimant had a compensable injury and had any disability. The claimant, in a request for review and response, appealed the extent-of-injury and disability issues, contending that the medical evidence supports her position and urges affirmance on the compensability and disability issues in her favor. The self-insured responds, urging affirmance on the issues on which it prevailed.

DECISION

Affirmed.

The claimant, a teacher in one of the self-insured's schools, contends that she sustained a compensable low back injury on _____, lifting and pushing a table. The claimant then attended a meeting and on getting up had back pain. The claimant saw a doctor the following day, May 8, 2003, but that report does not mention the table incident. The claimant subsequently resigned her position. In dispute is whether the claimant resigned (and for that matter filed her claim) because she had failed to pass a certification test required for her continued employment (apparently the results were posted on May 9, 2003) or because of pain due to her injury or both. An MRI performed on June 5, 2003, showed only mild degenerative disc disease. Another MRI performed on October 23, 2003, showed a central herniation at the L4-5 level. A surveillance video tape taken on August 21, September 13 and September 15, 2003, showed the claimant performing ordinary activities of life including, driving, attending a basketball game, and lifting/carrying some items and a baby.

The evidence was in conflict on most of the points at issue. The hearing officer commented, in the Background Information section of her decision and order, that the videotape would indicate that the claimant does not have "many, if any, limitations due to the injury." The hearing officer found that the claimant suffered a lumbar strain (which is supported by an IME report) and found a period of disability, which ended on the day prior to the first surveillance video.

The questions of whether the claimant sustained a compensable injury, and had disability, presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ) and was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence as she did. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

J.G.
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge